

BEFORE THE BOARD OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

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IN THE MATTER OF THE LARSON)	
CREEK TEMPORARY CONTROLLED)	ORDER EXTENDING TEMPORARY
GROUNDWATER AREA, RAVALLI)	DESIGNATION FOR AN ADDITIONAL
COUNTY, MONTANA.)	TWO YEAR PERIOD

* * * * *

The Board of Natural Resources and Conservation (Board) issued a Final Order establishing the Larson Creek Temporary Controlled Groundwater Area on November 16, 1984. The Larson Creek Final Order was issued after notice and hearing pursuant to Mont. Code Ann. §85-2-506 (1985). Mont. Code Ann. §85-2-507(5)(a) (1985) provides that the Board may, for sufficient cause, extend a temporary controlled groundwater area for an additional two years.

If the present temporary controlled groundwater area for Larson Creek is not extended or if a permanent controlled groundwater area is not created, the Board's November 16, 1984, Final Order will expire on November 16, 1986.

By Notice of Hearing and Opportunity to Participate dated September 15, 1986, the Board gave notice that it would hold a contested case hearing on the issue of whether the temporary controlled groundwater area for Larson Creek should be extended for an additional two year period. The following parties filed Notice of Intent to Participate in the extension hearing:

Michael and Michelle McBride (Thomas J. Beers-Attorney)
Maurice L. and Esta M. Owen
Rodney W. and Barbara Prellwitz
K.O. Knottnerus

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Fred and Patricia Burnell
Michael J. Nile
Lonnie Umphlett
Department of Natural Resources and Conservation (Donald D.
MacIntyre-Attorney)

All of the above parties entered into a Stipulation agreeing to an extension of the existing temporary controlled groundwater designation. As part of that Stipulation, the parties agreed that only the Department of Natural Resources and Conservation (DNRC) need appear at the November 7, 1986, hearing.

On November 7, 1986, the Board pursuant to the Montana Water Use Act, Title 85, Chapter 2, Part 5 and the Administrative Procedures Act, Title 2, Chapter 4, Part 6 conducted a hearing in the above-entitled matter in Billings, Montana.

At the hearing the following exhibits were offered into the record without objection:

1. Proposal for Decision dated August 16, 1984;
2. Final Order dated November 16, 1984;
3. A letter signed by seven petitioners dated September 2, 1986;
4. A letter signed by nine petitioners dated September 20, 1986;
5. Notice of Intent to Participate in the Hearing by the Department of Natural Resources and Conservation dated October 3, 1986;
6. Notice of Intent to Participate in the Hearing by Michael McBride and Michelle McBride dated October 3, 1986.
7. Statement of Testimony of the Department of Natural Resources and Conservation;
8. Stipulation of all parties filing a Notice of Intent to Participate in the extension hearing.

Based upon the record herein, the Board makes the following:

FINDINGS OF FACT

1. The Board has jurisdiction over the subject matter.
2. The Board adopts by reference the Findings of Fact entered in its August 16, 1984, Proposal for Decision.
3. A majority of the original Petitioners requested a two year extension of the Larson Creek Temporary Controlled Groundwater Area.
4. A Notice of Hearing and Opportunity to Participate was duly served on all parties to the original hearing on the petition to establish a controlled groundwater area. Additionally, copies of the Notice were served by mail upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; each person or public agency known from an examination of the records in the DNRC's office to be a claimant or appropriator of groundwater in the area in question; the Montana State Bureau of Mines and Geology; Mr. George Pike, Chief, U.S. Geological Survey; and Mr. Steven L. Pilcher, Chief, Department of Health and Environmental Sciences, Water Quality Bureau.
5. All parties filing a Notice of Intent to Appear at the Board hearing on the question of extension of the controlled groundwater area entered into a Stipulation agreeing to the extension for a two year period. All parties to the Stipulation agreed that any applicant for a Beneficial Water Use Permit made prior to January 1, 1987, could proceed to process that application through the Department of Natural

Resources and Conservation with the condition that the applicant prove by clear and convincing evidence that the proposed use would not impair or substantially interfere with existing rights to appropriate groundwater within the plotted area designated in the Board's Final Order of November 16, 1984.

6. The Petitioners and the DNRC have been collecting geohydrology data on the area during the past two years and have determined that continued data collection is necessary to obtain a more thorough understanding of the groundwater aquifer in the temporary controlled groundwater area.

WHEREFORE, based upon the foregoing Findings of Fact, the Board hereby makes the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and over the subject matter herein. Mont. Code Ann. §§85-2-113, -506 (1985).

2. The Board adopts by reference the Conclusions of Law entered in its August 16, 1984, Proposal for Decision.

3. The Board adopts by reference its November 16, 1984, Final Order except as expressly modified by this Order.

4. Proper notice of hearing on the extension has been given.

5. After the collection of data for two years sufficient facts are not available to designate the permanent controlled groundwater area.

6. A two year extension of the temporary controlled groundwater area would allow the necessary time to develop sufficient facts to make a determination on the petition for designation of controlled groundwater area.

7. There exists sufficient cause to extend the Larson Creek Temporary Controlled Groundwater Area for an additional two years. This temporary designation will terminate on November 16, 1988.

8. The requirement that the number of wells that may be allowed to tap the subject aquifer be strictly limited by DNRC continues to be necessary to protect the public welfare in accordance with the intent and purposes of the Water Use Act. Mont. Code Ann. §§85-2-101, -507 (1985).

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Board makes the following:

ORDER

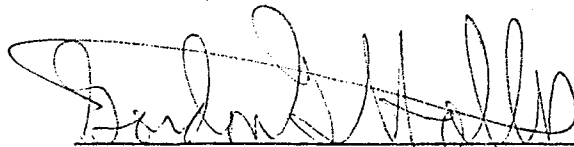
There is sufficient cause, pursuant to Mont. Code Ann. §85-2-507(5)(a) (1985) to extend the Larson Creek Temporary Controlled Groundwater Area for an additional two years. Temporary designation will terminate on November 16, 1988, pursuant to Mont. Code Ann. §85-2-507(5)(b) (1985). The conditions of the Board's Final Order of November 16, 1984, shall remain in full force and effect except that the Final Order at Page 4 is amended to read as follows:

During the period of temporary controlled designation, the shallow aquifer shall be closed to further appropriation except by the issuance of a permit for beneficial water use by the Department for uses applied for prior to January 1, 1987. The Department shall accept Applications for Beneficial Water Use Permits to appropriate groundwater from the shallow aquifer as follows:

a) Each Application for Beneficial Water Use Permit to appropriate by means of a well shall be submitted to the Missoula Area Water Right Bureau Field Office. Upon receipt, Department personnel shall plot the proposed well site on a prepared map of the controlled area. Around each existing well will be plotted a circle, with the existing

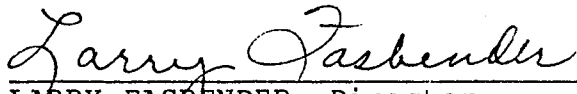
well being in the center thereof, and the radius of the circle being 263.3 feet. Such a circle will also be plotted around the proposed well site. No Application for Beneficial Water Use Permit to appropriate by means of a well of less than 70 feet in depth will be approved for issuance of a permit where the circle around the proposed site intersects the circle around any existing well unless the applicant proves by clear and convincing evidence that the proposed use will not impair or substantially interfere with existing rights to appropriate groundwater within the circle. All ~~other~~ permit applications will follow the normal Department permit processing steps prior to issuance or denials, except that any wells permitted to a depth of more than 70 feet within the geographical area of the Controlled Groundwater Area will be required to be constructed in such a manner that no well has perforations tapping the controlled aquifer and that the controlled aquifer be sealed off with grout to prohibit leakage from the controlled aquifer to other aquifers. The Department will impose such other and further conditions on a case by case basis, ~~to assure that wells drilled within the area will not be tapping~~ as may be necessary to protect the aquifer of concern. (Amendatory language underlined or interliniated).

DATED this 7th day of November, 1986.



GORDON HOLTE, Chairman
Board of Natural Resources
and Conservation

ATTEST:



LARRY FASBENDER, Director
Department of Natural Resources
and Conservation

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